IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Writ Petition No.30661 of 1997
DATED 23-4-2007

BETWEEN
A.Balalingaiah

.. Petitioner

And

The A.P.State Electricity Board,
Represented by its Member Secretary,
Vidyutjsoudha, Hyderabad and another.

.. Respondents

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.30661 of 1997

ORDER:

Seeking to have the proceedings dated 6.11.1996, as confirmed by proceedings dated 7.8.1997, declared as arbitrary and illegal, the present writ petition is filed.

The petitioner was imposed the punishment of stoppage of two increments with cumulative effect by order dated 6.11.1996 for the misconduct held established against him in the departmental enquiry. The appeal preferred by him was dismissed by order dated 7.8.1997. While several contentions have been raised by Sri V.Mallik, learned counsel for the petitioner, the writ petition is to be allowed on the short ground that, before disagreeing with the findings of the Enquiry Officer, the disciplinary authority had neither put the petitioner on notice nor had given him an opportunity of being heard.

The Enquiry Officer, in his report, held that it was doubtful that 'R. Phase CT Screw is in closed position all the while from 20.2.1991 and that the benefit of doubt had to be given to the petitioner' and regarding B phase CT screw, it was held that 'it might have fallen consequent to meter box and meter vibration for which separate will be sent and that the connivance of the consumer could not be proved due to non-availability of seal bit NI.B.45408 and non-availability of rensifle information for connivance'. The Enquiry Officer held that the charge was not proved.

The disciplinary authority, in his proceedings dated 31.5.1995, observed that the report of the Enquiry Officer was untenable and that his findings were mostly on unreasonable grounds. Having discussed in detail the reasons why he could not accept the findings of the Enquiry Officer, the disciplinary authority called upon the petitioner to show cause as to why the punishment of stoppage of three increments with cumulative effect should not be imposed. It is necessary to note that, while the petitioner herein was called upon to show cause against the proposed punishment, he was not given an opportunity of being heard by the disciplinary authority before he disagreed with the findings of the Enquiry Officer. The Supreme Court in **Punjab National Bank Vs. Kunj Behari Misra**[1] and **Yoginath D.Bagde v. State of Maharastra**[2] and a Division Bench of this Court in **Member Secretary, APSEV Vs. G.Amruthaiah**[3] observed that by reason of the report of the Enquiry Officer, the delinquent employee derived a right of being considered for exoneration from the charges at the hands of the disciplinary authority and while the disciplinary authority was entitled to differ with such findings, before it arrived at a conclusion that the findings arrived at by the enquiry officer were not correct and/or perverse, an

opportunity of hearing must be given to the delinquent employee and failure to do so was not only in violation of the principles of natural justice but also the delinquent employee would suffer great prejudice.

Inasmuch as the petitioner herein has not been given an opportunity of being heard before the disciplinary authority has chosen to differ with the findings of the enquiry officer, the impugned order of punishment, as confirmed in appeal, is liable to be quashed. Needless to state that this order shall not preclude the disciplinary authority from giving such an opportunity to the petitioner and thereafter take action against him in accordance with law.

The writ petition is allowed. However, in the circumstances, without costs.

RAMESH RANGANATHAN,J

Dt: 23.4.2007
msv.

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[1] AIR 1998 SC 2713
[2] (1999) 7 SCC 739
[3] 2001(4) ALD 240